

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

FENNER INVESTMENT, LTD
Plaintiff,

v.

MICROSOFT CORPORATION, et al.
Defendants.

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CASE NO. 6:07-CV-8 LED

ORDER

Following the review of the parties' oral arguments and written submissions on Defendants' Motions for Summary Judgment and Motion for Clarification the Court concludes that the material disputes between the parties concern the meaning and scope of the patent-in-suit ("the '751 patent"). As such, these disputes are issues of law. *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008). The Court further finds that a correct construction of the claim terms in the '751 patent supports the arguments raised in Defendants' Motions for Summary Judgment of Non-infringement. Therefore, Nintendo's Motion for Summary Judgment of Non-Infringement (Docket No. 207) and Microsoft's Motion for Summary Judgment of Non-Infringement (Docket No. 208) are **GRANTED**. A full opinion and final judgment will follow. The jury is dismissed. No appearance on March 17, 2009 is required.

So ORDERED and SIGNED this 16th day of March, 2009.

A handwritten signature in black ink, appearing to read "Leonard Davis", written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE